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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,249	04/26/2001	Michael J. Albanese	EYEF.002PA	7358
40581	7590	05/09/2006	EXAMINER PHILLIPS, HASSAN A	
CRAWFORD MAUNU PLLC 1270 NORTHLAND DRIVE, SUITE 390 ST. PAUL, MN 55120			ART UNIT 2151	PAPER NUMBER

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/843,249

Applicant(s)

ALBANESE ET AL.

Examiner

Hassan Phillips

Art Unit

2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 60-79 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 60-79 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to communications filed February 27, 2006.

Claim Rejections - 35 USC § 112

2. In considering the amendments made to the claims, Examiner has withdrawn all rejections under 35 U.S.C. 112, first paragraph.

Response to Arguments

3. Applicant's arguments filed February 27, 2006 have been fully considered but they are not persuasive. Applicant argued that: there is no motivation to combine the portions of the Yates reference cited in the Office Action, with the (distinguished) background applications. Examiner respectfully disagrees with Applicant's assertions.

4. Regarding Applicant's remarks, Examiner submits that motivation was not needed in citing portions of the Yates reference that disclose Applicant's claimed invention. Examiner submits that while Yates teaches both features well-known in the art, and advantages over those features well-known in the art, the Yates reference taken "as a whole" discloses features of Applicant's claimed invention (specifically claim 60) either expressly, or inherently. Examiner thus maintains that previous rejections to Applicant's claims with regards to the Yates reference were proper.

5. Furthermore, the Examiner has interpreted the claim language as broadly as possible. It is also the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in a manner that distinguishes over the prior art. Failure for Applicant to significantly narrow definition/scope of the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterated the need for Applicant to define the claimed invention more clearly and distinctly. Accordingly the references supplied by the examiner in the previous office action covers the claimed limitations. The rejections are thus sustained. Applicant is requested to review the prior art of record for further consideration.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 60, 61, 63, 64, 67, 69-71, 74-77, 79, are rejected under 35 U.S.C. 102(e) as being anticipated by Yates et al. (hereinafter Yates), U.S. Patent 6,167,438.

8. In considering claim 60, Yates discloses a system for directing data over an internet protocol (IP) network, the system comprising: a plurality of remote network appliances adapted to receive data via the IP network, (col.1, lines 23-36); a network router communicatively coupled to the IP network, (col. 2, lines 44-57); a plurality of source network nodes, each source network node including a computer programmed with application routing functions for providing, to the network router, information regarding data available at the source network node, and for routing data to a remote network appliance via the IP network, (col. 2, lines 44-57); the network router adapted to receive said provided information regarding data available at the source network nodes and to respond to a request for data routing to one of the plurality of remote network appliances by ascertaining availability of the requested data at the plurality of source network nodes using information provided thereby, by selecting one of the source network nodes that bears the requested data and by communicating with the computer at the selected source network node to facilitate the data routing request, (col. 2, lines 44-57); and wherein the computer at the selected source network node is adapted to respond to the communication from the network router by implementing the programmed application routing functions to route the requested data from the selected

source network node to the remote network appliance specified in the request, (col. 2, lines 44-57, col. 1, lines 36-49).

9. In considering claim 61, Yates teaches the network router is further adapted to track the routing of requested data to the plurality of remote network appliances and to store information characterizing the tracked routing, (col. 12, lines 12-33).

10. In considering claim 63, Yates teaches the source network nodes provide information regarding data available at the source network node by providing information characterizing data-rich media content available at the source network node, and wherein the network router facilitates routing of the data-rich media content in response to a request therefore, (col. 1, lines 36-49, col. 1, line 66-col. 2, line 16, col. 2, lines 44-57, and col. 6, lines 9-15,).

11. In considering claim 64, it is inherent in the teachings of Yates that the source network nodes are personal computers coupled to the Internet, (col. 1, lines 6-22).

12. In considering claim 67, Yates teaches a buffer adapted to receive data routed from the computer at the selected source network node, to store at least a portion of the received data and, at a later time, to send the stored data to the remote network appliance specified in the request, (col. 2, lines 28-43).

13. In considering claim 69, Yates teaches the network router administratively controls the computer at the selected source network node to facilitate the data routing request, (col. 2, lines 28-43).

14. In considering claim 70, it is inherent in the teachings of Yates that the network router provides authorization for a particular user submitting the request for data routing to one of the plurality of remote network appliances, and communicates with the computer at the selected source network node to facilitate the routing request in response to the provided authorization., (col. 1, lines 6-22, col. 4, line 60-col. 5, line11).

15. In considering claim 71, Yates teaches the network router is adapted to monitor data traffic on communication links available for use in routing the requested data, and to select one of the available communication links as a function of the monitored data traffic, (col. 8, lines 20-54).

16. In considering claim 74, Yates teaches the routing controller programmed to track and report data transfer information, (col. 12, lines 12-33).

17. In considering claim 75, Yates teaches one of the source network nodes programmed to track and report the transfer of requested data from one of the source network nodes, (col. 12, lines 12-33).

18. In considering claim 76, Yates teaches a computer at a particular source network node is programmed with application routing functions for providing, to the network router, information regarding streaming data available at the particular source network node, and for streaming data to a remote network appliance via the IP network, and wherein the network router receives said provided information regarding the available streaming data and responds to a request for streaming data at one of the plurality of remote network appliances by ascertaining availability of the requested streaming data at the particular source network node using information provided thereby, and by communicating with the computer at the particular source network node to facilitate the streaming data routing request, (col. 1, lines 6-49, col. 2, lines 44-57); and wherein the computer at the particular source network node is adapted to respond to the communication from the network router by implementing the programmed application routing functions to stream the requested streaming data from the particular source network node to the remote network appliance specified in the request, (col. 2, lines 44-57).

19. In considering claim 77, Yates teaches the at least one of the remote network appliances being adapted to decrypt the routed data to make it available for use, (col. 18, lines 21-36).

20. In considering claim 79, Yates teaches the network router is adapted to respond to a request for data routing that includes a routing priority, and to

communicate with the computer at the selected source network node to facilitate the data routing as a function of the routing priority, (col. 16, lines 35-40).

Claim Rejections - 35 USC § 103

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claim 62, is rejected under 35 U.S.C. 103(a) as being unpatentable over Yates in view of Lecheler, U.S. patent 6,308,209.

23. In considering claim 62, although the disclosed system of Yates shows substantial features of the claimed invention, it fails to expressly disclose: using the tracked routing to bill at least one of a user at a source network node and a user at a remote network appliance for data transferred to the remote appliance from the source network node.

Nevertheless, Yates does teach transferring data to the remote appliance from the source network node, (col. 1, line 66-col. 2, line 16, col. 6, lines 9-15). Also, tracking routing to bill at least one of a user at a source network node and a user at a remote network appliance was well known in the art at the time of the present invention. Such teachings are disclosed a similar field of endeavor, where Lecheler teaches a method

and system for measuring usage of a computer network by a network user comprising: tracking routing to bill at least one of a user at a source network node and a user at a remote network appliance, (col. 4, lines 1-21).

Thus, given the teachings of Lecheler, it would have been obvious to a person of ordinary skill in the art at the time of the present invention to modify the teachings of Yates to show using tracked routing to bill at least one of a user at a source network node and a user at a remote network appliance for data transferred to the remote appliance from the source network node. This would have advantageously provide a means for billing users higher for transferring more data than others, or more efficiently billing users who transferred more data than they were authorized to transfer, (Lecheler col. 4, lines 1-21).

24. Claim 65, is rejected under 35 U.S.C. 103(a) as being unpatentable over Yates in view of Wolpert, U.S. patent 6,577,601.

25. In considering claim 65, although the disclosed system of Yates shows substantial features of the claimed invention, it fails to expressly disclose: routing data using a least-cost route.

Nevertheless, routing data using a least-cost route was well known in the art at the time of the present invention. In a similar field of endeavor Wolpert teaches this where he discusses the prior art. More specifically, Wolpert discloses: routing data over a particular communication link using a least cost route, (col. 2, lines 24-31).

Thus, it would have been obvious to a person of ordinary skill in the art at the time of the present invention to modify the teachings of Yates to show the network router adapted to identify a least-cost route for routing the requested data to the one of the plurality of remote network appliances and to communicate with the computer at the selected source network node to facilitate the data routing request by directing the computer at the selected source network node to route the requested data over the identified least-cost route. Doing so would have minimized resource utilization while implementing a cost-efficient, user-friendly means for transparently routing data from one point to another, (Wolpert, col. 2, lines 24-31).

26. Claims 66, 78, are rejected under 35 U.S.C. 103(a) as being unpatentable over Yates in view of Bawa et al. (hereinafter Bawa), U.S. patent 6,697,333.

27. In considering claim 66, although the disclosed system of Yates shows substantial features of the claimed invention, it fails to expressly disclose: the network router is adapted to identify a route for routing the requested data as a function of a rate at which the requested data can be sent over the identified route, and to communicate with the computer at the selected source network node to facilitate the data routing request by directing the computer at the selected source network node to route the requested data over the identified route.

Nevertheless, in a similar field of endeavor Bawa teaches a network router adapted to identify a route for routing requested data as a function of a rate at which the

requested data can be sent over the identified route, and to communicate with a computer at a selected source network node to facilitate the data routing request by directing the computer at the selected source network node to route the requested data over the identified route, (col. 2, lines 1-38).

Thus, given the teachings of Bawa, it would have been obvious to one of ordinary skill in the art to modify the teachings of the Yates to show the network router is adapted to identify a route for routing the requested data as a function of a rate at which the requested data can be sent over the identified route, and to communicate with the computer at the selected source network node to facilitate the data routing request by directing the computer at the selected source network node to route the requested data over the identified route. This would have provided load balancing on the routes between the source network node and the remote network appliance, thereby efficiently routing the requested data to the remote network appliance, (Bawa, col. 2, lines 1-38).

28. In considering claim 78, although the disclosed system of Yates shows substantial features of the claimed invention, it fails to expressly disclose: the network router is adapted to detect the amount of traffic on a portion of the IP network and to communicate with the computer at the selected source network node to facilitate the data routing request by directing the source network node to route the requested data as a function of the detected amount of traffic.

Nevertheless, in a similar field of endeavor Bawa teaches a network router adapted to detect the amount of traffic on a portion of a network and to communicate

with a computer at a selected source network node to facilitate the data routing request by directing the source network node to route the requested data as a function of the detected amount of traffic, (col. 2, lines 1-38).

Thus, given the teachings of Bawa, it would have been obvious to one of ordinary skill in the art to modify the teachings of Yates to show the network router is adapted to detect the amount of traffic on a portion of the IP network and to communicate with the computer at the selected source network node to facilitate the data routing request by directing the source network node to route the requested data as a function of the detected amount of traffic. This would have provided load balancing on the routes between the source network node and the remote network appliance, thereby efficiently routing the requested data to the remote network appliance, (Bawa, col. 2, lines 1-38).

29. Claim 68 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yates in view of Reed et al. (hereinafter Reed), U.S. patent 5,862,325.

30. In considering claim 68, Yates further discloses responding to a request for routing a content file to one of the plurality of remote network appliances by selecting one of the source network nodes that bears the requested content file and by communicating with the computer at the selected source network node to facilitate the data routing request, (col. 2, lines 44-57).

Although the disclosed system of Yates shows substantial features of the claimed invention, it fails to expressly disclose: providing a graphic template and a list of content files to a remote network appliance.

Nevertheless, providing a graphic template and list of content files to a remote network appliance was well known in the art at the time of the present invention. In a similar field of endeavor Reed teaches providing a graphic template and a list of content files to a remote network appliance, (col. 28, line 39 through col. 29, line 41).

Thus, it would have been obvious to a person of ordinary skill in the art at the time of the present invention to modify the teachings of Yates to show providing a graphic template and a list of content files to a remote network appliance. This would have provided an efficient means for retrieving content files from the source network nodes, (Yates, col. 1, line 6 through col. 2, line, line 16, Reed, col. 29, lines 12-41).

31. Claim 72, is rejected under 35 U.S.C. 103(a) as being unpatentable over Yates in view of Miller et al. (hereinafter Miller), U.S. patent 5,920,701.

32. In considering claim 72, although the disclosed system of Yates shows substantial features of the claimed invention, it fails to expressly disclose: detecting a delivery related characteristic including at least one of: data transmission accuracy; data transmission speed; data transmission security and data transmission time.

Nevertheless, in a similar field of endeavor Miller teaches: a routing controller (10), for detecting a delivery related characteristic including at least one of: data

transmission accuracy; data transmission speed; data transmission security and data transmission time, (col. 6, lines 35-51).

Thus, given the teachings of Miller, it would have been obvious to a person of ordinary skill in the art at the time of the present invention to modify the teachings of Yates to show the routing controller detecting a characteristic that includes a delivery-related characteristic including at least one of: data transmission accuracy; data transmission speed; data transmission security and data transmission time of routed data over a particular communications link, and facilitating routing of the requested data over the selected one of the available communications links. This would have facilitated delivery of data to requesting system nodes in an optimized and efficient manner, (Miller col. 1, lines 51-56).

33. Claim 73, is rejected under 35 U.S.C. 103(a) as being unpatentable over Yates in view of Miller and further in view of Appanna et al. (hereinafter Appanna), U.S. patent 6,678,244.

34. In considering claim 73, although the disclosed system of Yates shows substantial features of the claimed invention, it fails to expressly disclose: delaying transfer of the requested data in response to detecting a delivery-related characteristic of a selected communications link indicating that the selected communication link is unable to handle additional data transfer.

Nevertheless, in a similar field of endeavor Appanna teaches delaying transfer of the requested data in response to detecting a delivery-related characteristic of a selected communications link indicating that the selected communication link is unable to handle additional data transfer, (col. 2, lines 40-52).

Thus, given the teachings of Appanna, it would have been obvious to one of ordinary skill in the art to modify the teachings of the Yates in view of Miller to show delaying transfer of the requested data in response to detecting a delivery-related characteristic of a selected communications link indicating that the selected communication link is unable to handle additional data transfer. This would have advantageously prevented a buildup of data in the communication path, and would have provided a means for efficiently transmitting data once the path was clear, (Appanna, col. 2, lines 30-36).

Conclusion

35. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

36. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hassan Phillips whose telephone number is (571) 272-3940. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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